IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 11107 of 2004

Between:

Gayatri All Castes Agro Horticulure Labour Contract Co-operative Society Ltd,
Rep. by its President, N.H. Prasad, 30-35-1/1, Innespeta, Rajahmundry,
East Godavari District.

..... PETITIONER

AND

1 The Director of Horticulture, Government of Andhra Pradesh,
Public Gardens, Hyderabad.
2 The Deputy Director of Horticulture, Office of the Horticulture, Near

Panchayat Raj, Guest House, Rajahmundry, E.G. District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the respondents herein in lifting the plants/grafts as per the terms and conditions of the tender Ref.HAD(1)305/2002, dt. 19-3-2002 is illegal arbitrary and violative of Articles, 14 and 21 of the Constitution of India and further direct the respondents to immediately lift the plants/grafts from the petitioner-society and arrange for the payments as per the schedule without any further delay.

Counsel for the Petitioner: MR.R.CHAKRAVARTHI

Counsel for the Respondents: GP FOR AGRICULTURE

The Court, at the admission stage, made the following:

ORDER:

This writ petition is filed seeking a declaration that the alleged inaction on the part of the respondents in lifting the plants/grafts as per the terms and conditions of the tender notification dated 19.03.2002, is arbitrary and illegal.

In the affidavit filed in support of the writ petition, it is stated that the petitioner is a Society registered under the provisions of the A.P. Cooperative Societies Act consisting of people belonging to all castes as its members. The first respondent, Director of Horticulture, Government of Andhra Pradesh, issued a tender notification dated 19.03.2002 inviting tenders for supply of different kinds of high quality fruit plants such as Mango, Pomegranate, and etc., for the purpose of development of dry horticulture in Ananthapur District during 2002-2003. The petitioner Society participated in response to the said tender notice by depositing Rs.5,000/- towards the Earnest Money Deposit (EMD). Subsequently, vide proceedings dated 18.05.2002, the first respondent informed the petitioner Society that their offer for the supply of 1.50 lakh Sapota variety Kalipathi at the rate of Rs.19/- per plant inclusive of transport, loading and unloading at selected points in Ananthapur, is accepted. As per the said proceedings, the plant material has to be supplied at selected points in Anantapur

District. The petitioner Society was informed that the plant material must be kept ready so as to shift the plants at short notice to Ananthapur most probably June, 2002. In pursuance thereof, the petitioner Society made all the necessary arrangements for obtaining loan from the Indian Bank and having received the consent from the Bank, the first respondent was informed about the same. While so, there was no further communication from the first respondent's office with regard to lifting of plants. The petitioner made a representation, dated 19.01.2003, to the first respondent bringing to their notice the failure to lift 1.50 lakh plants as per the terms and conditions of the tender schedule and requested them to take necessary action. In pursuance thereof, the technical team of the first respondent re-inspected the petitioner Society on 19.02.2003 and found that the grafts are in fit and good condition to suit their needs and re-assured lifting of 1.50 lakh plants within a short period. However, there was no further response from the respondent authorities in spite of the fact that the petitioner made representations dated 09.06.2003 and 21.07.2003. The petitioner also made a further representation dated 01.09.2003 to the Office of the Minister for Sugar and Horticulture. Thereafter, another representation was made in the month of March, 2004 and a legal notice was also got issued on 29.03.2004. However, there is no response from the respondents. Hence, this writ petition.

On behalf of the respondents, a counter affidavit has been filed by the Director of Horticulture, Government of Andhra Pradesh, Hyderabad, stating that all the approved tenderers vide office letter, dated 18.05.2002, were requested to keep ready their plant material for shifting to Ananthapur which will be intimated separately. Based on the need, letters were issued to the suppliers and also after verification of samples. Since the required plant material was received, further orders were not issued to the approved tenderers. In spite of no orders were issued, the petitioner Society approached the ADH, Ananthapur along with plant material during February, 2003 after the plantation period was over. However, the ADH verified the

plant material and not satisfied with the plant material, rejected them. It is also stated that no work order or supply order was issued to the supplier except asking the Society to keep ready the plant material which will be intimated separately. The plea that the technical team of the respondent authorities visited the petitioner Society on 19.02.2003 has been denied. It is further stated that the EMD furnished by the petitioner was also returned along with other tenderers on 24.11.2003.

It is to be noted that the issue raised for adjudication in this writ petition is a dispute between the parties pursuant to a contract entered in between them. Such a dispute, which involves enforcement of contractual obligation, is not amenable to writ jurisdiction. Hence, on that ground alone the writ petition is liable to be dismissed. Even otherwise, as can be seen from the averments in the counter affidavit, no work order has been issued in favour of the petitioner Society and they were only intimated to keep the plants ready. Further, the EMD was also returned to them long back on 24.11.2003 and the petitioner having kept quiet almost for a year filed this writ petition which appears to be an after thought. Thus, the writ petition is also liable to be dismissed on the ground of laches. The mere fact that the petitioner was making representations is of no consequence and therefore no relief can be granted to the petitioner, who has received the EMD returned by the respondents long back in November, 2003 without raising any protest.

The learned counsel for the petitioner placed reliance on a decision of the Supreme Court in **ABL International Ltd., & another v Export Credit Guarantee Corporation of India Limited and others** and contended that the Writ Court has jurisdiction to entertain a writ involving disputed questions of fact and there is no absolute bar for entertaining a writ even if the same arises out of a contractual obligation.

There can be no dispute about the ratio laid down in the said case, wherein it was held that in appropriate case, the Writ Court can

exercise jurisdiction under Article 226 of the Constitution of India even where it arises out of contractual obligations.

However in the case on hand, as can be seen from the material on record it is clear that the facts are in dispute and no case is made out to show that the impugned action is *ex facie* illegal. This is not a case where the rival claims of the parties can be decided on mere interpretation of the terms and conditions of the contract, but it requires investigation into several disputed questions of fact which may require consideration of oral and documentary evidence that may be produced by the parties. Hence this is not a fit case which warrants interference of this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

Accordingly the writ petition is dismissed granting leave and liberty to work out the appropriate remedy as available under law. No costs.

16.11.2004

VGB

To

1 The Director of Horticulture, Government of Andhra Pradesh,
Public Gardens, Hyderabad.
2 The Deputy Director of Horticulture, Office of the Horticulture, Near

Panchayat Raj, Guest House, Rajahmundry, E.G. District.

3 2CCs to the Government Pleader for Agriculture, High Court

Buildings, Hyderabad (OUT)

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